



ADVISORY OPINION 07-07

Interpretation of T.C.A. §§ 3-6-304 and 3-6-305
with respect to an association's provision of various
benefits, goods and services to its members who are
state officials, when such association is an employer
of a lobbyist.

INTRODUCTION

The following Advisory Opinion is in response to a written inquiry from Ms. Candi Rawlins on behalf of the Tennessee Recreational Parks Association ("TRPA") as to whether certain conduct is permitted under the Comprehensive Governmental Ethics Reform Act of 2006 (the "Act").

Ms. Rawlins poses the following questions:

- (1) Is the TRPA permitted to pay a portion of its President's and President-Elect's travel and lodging expenses to conferences and meetings, if the President or President-Elect is also a state official?
- (2) Is the TRPA permitted to provide a working lunch or refreshments to members of its Executive Committee, if such members are also state officials?
- (3) Is the TRPA permitted to provide a meal ticket or a registration fee as a token of appreciation to volunteers of its event host committee, if such volunteers are also state officials?
- (4) Is the TRPA permitted to offer state agency membership packages that include membership benefits and discounts for the state employees working in the agency?
- (5) Is the TRPA permitted to co-sponsor an educational training event in conjunction with a state agency? Specifically, is the TRPA permitted to share in the costs of the meals and materials being provided to the attendees, and the rental of meeting space?
- (6) Is the TRPA permitted to provide food and refreshments to TRPA members who are also state officials at an event which is hosted by TRPA, but is sponsored by an employer of a lobbyist other than the TRPA?
- (7) Is the TRPA permitted to rent meeting space from state or local governments? Will the answer remain the same if TRPA leases space in state parks while lobbying the state on issues relating to parks, recreation, and the environment? Will the answer remain the same if the city of Memphis adopts the state ethics laws?

ANSWERS

In response to the above questions, the Tennessee Ethics Commission (“Commission”) concludes:

- (1) The TRPA is not permitted to provide a gift to its President or President-Elect when such President or President-Elect is a state official, and no exception applies for their travel and lodging expenses. Accordingly, the TRPA is not permitted to pay the travel and lodging expenses of its President or President-Elect who are state officials.
- (2) The TRPA is permitted to provide a working lunch and refreshments to members of its Executive Committee who are state officials, if the value of the meal is less than \$50.00 and the meal otherwise complies with the requirements of T.C.A. § 3-6-305(b)(9) and (10).
- (3) The TRPA is permitted to provide meals to state officials who serve on the event host committee as long as the value of the meal tickets does not exceed \$50.00 per person, per day, and otherwise complies with the requirements of T.C.A. § 3-6-305(b)(10). In addition, the TRPA is permitted to provide a free registration for the event to such members because a registration fee is exempted from the definition of the term “gift” contained in T.C.A. § 3-6-301(11).
- (4) The TRPA may provide membership packages and discounts to state agencies if the benefits of such packages are not enhanced due to the status of the employees as state officials.
- (5) The TRPA may co-sponsor an educational training event in conjunction with a state agency if the TRPA pays fair market value for the goods and services for which it pays.
- (6) Then TRPA may provide members food and refreshments at an event that is sponsored by an employer of a lobbyist other than TRPA if the value of such meal and beverage does not exceed \$50.00 per person, per day and otherwise complies with the requirements of T.C.A. § 3-6-305(b)(10).
- (7) The TRPA is permitted to rent space, equipment, and other goods and services, from state agencies if the TRPA pays fair market value to the agency. The answer remains the same if the TRPA leases space in state parks while lobbying the state on issues relating to parks, recreation, and the environment. The answer remains the same if the City of Memphis votes to place itself under the Act.

BACKGROUND

Ms. Rawlins is the Executive Director and a lobbyist for the TRPA. TRPA is an affiliate of the National Recreational Parks Association, but is established as a separate legal entity. The TRPA’s membership includes public employees who work in parks and recreation at the city, county, state and federal levels, and private citizens who have an interest in parks and recreation. In the past, the TRPA has provided financial assistance to its President and President-Elect to travel to its national conferences and regional meetings, thereby requiring the attendees to be responsible for the remainder of the expenses. Additionally, the TRPA’s administrative budget allows it to pay for lunch or refreshments when its Executive Committee meets. Members of the

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TRPA also work at events as volunteers and are given a meal ticket or a ticket to the event in appreciation. Persons who serve on the host committee for a conference in Tennessee are provided a lunch or dinner. Moreover, the TRPA offers membership packages that include “citizen membership” for advisory boards or elected boards of public agencies. The package includes the TRPA’s magazine, member directory and discounts on educational programs. There are no membership restrictions. The membership package is available to everyone, including persons employed with various agencies. Lastly, the TRPA may offer discounts to events (for example, allowing a fourth person from a state agency to attend a workshop free if admission is paid for three others from the agency). The events are open to all employees of the agency. TRPA has co-sponsored educational training events with the Department of Environment and Conservation. In exchange for a \$500.00 sponsorship, the TRPA receives advertisement at the conference. Additionally, the TRPA shares in the costs of providing food and beverages to the participants at a networking event, shares in the costs of the meeting room rental; and provides advocacy training to local government employees, private citizens and members of the TRPA’s advisory council. Typically, with this scenario, a sponsor pays the other portion. The TRPA has no knowledge whether or not the sponsor is an employer of a lobbyist, nor control over how the money is used. Ms. Rawlins additionally states that the TRPA will hold its 2008 conference at the Memphis Convention Center. The TRPA will pay the City of Memphis for the meeting space. The cost of meals will be paid to the Memphis Marriott.

DISCUSSION

A. PAYMENT OF STATE OFFICIAL MEMBERS’ TRAVEL AND LODGING EXPENSES

Is the TRPA permitted to pay a portion of its President’s and President-Elect’s travel and lodging expenses to its national conferences and regional meetings if the President and President-Elect are also state officials?

State officials are often members of, or volunteers for, non-profit organizations and professional associations, and in that capacity may solicit contributions, depending on the organization or association. An organization such as the TRPA, however, is primarily comprised of government employees and most of its state employee members receive their membership through their state agency or as a direct result of their employment with the agency. Accordingly, it is difficult, if not impossible, for the state official, acting on behalf of TRPA, to be seen as performing a role separate from his or her status as a state employee. The restrictions in the Act relative to state officials and employers of lobbyists therefore apply to TRPA and its state employee members.

Regarding lodging expenses, T.C.A. § 3-6-304(h) provides:

Except to the extent permissible under T.C.A. § 3-6-305, no employer of a lobbyist, lobbyist or any person acting at the direction of an employer of a lobbyist shall pay the lodging expenses of an official in the legislative or executive branch or immediate family of the official.

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T.C.A. § 3-6-305(b)(7)(B) provides an exception to the ban on lodging expenses for attendance at conferences sponsored by an established and recognized organization of elected or appointed state government officials. TRPA is not exclusively comprised of state-level officials, and thus this exception does not apply.

Another exception to this ban is contained in T.C.A. § 3-6-305(b)(1), which exempts, “Benefits resulting from business, employment, or other outside activities of a candidate or official or the immediate family of a candidate or official, if such benefits are customarily provided to others in similar circumstances and are not enhanced due to the status of the candidate or official.”

TRPA is an established and recognized membership organization primarily for government employees, and most members receive their membership by virtue of their government employment. Accordingly, a state official’s membership in TRPA cannot be construed as an “outside activity.” Thus, the exception does not apply and the ban contained in T.C.A. § 3-6-304(h) prohibits TRPA, as an employer of a lobbyist, from paying all or any part of the lodging expenses of any officer who is also a state official.

Regarding the payment of the officers’ travel expenses, the Ethics Reform Act of 2006 (the “Act”), provides two exceptions. T.C.A. § 3-6-305(b)(7)(A) contains an exception for out-of-state travel, if such expenses are paid for or reimbursed by a governmental entity or an established and recognized organization of elected or appointed state government officials, staff of state government officials or both officials and staff, or any other established and recognized organization that is an umbrella organization for such officials, staff, or both officials and staff. As previously noted, TRPA is not exclusively comprised of state-level government officials, and thus the TRPA cannot be construed as an organization of such officials. A contrary result would allow any organization which includes state-level government officials to be considered an “established and recognized organization of elected or appointed state government officials”, which would allow virtually any organization to pay the out-of-state travel expenses of government officials. If the legislature had intended such a broad result it could have written this exception to simply state that organizations may pay the out-of-state travel expenses for its members who are state officials. Instead, it narrowed the exception by adding the requirement that the entity by an organization of “elected or appointed state government officials...”

A strict construction of this exception is also appropriate when it is read in conjunction with the other exception for travel that is contained in T.C.A. § 3-6-305(b)(11), which states that there is an exception for “occasional or incidental *local* travel for which no fare is ordinarily charged.” Travel to national conferences and regional meetings does not constitute local travel for which no fare is ordinarily charged, and thus this exception does not apply.

A contrary interpretation of these exceptions would prohibit the TRPA from paying its President’s travel from Knoxville to a conference in Memphis, but would allow the TRPA to pay his or her travel from Knoxville to Arkansas or Mississippi.

Accordingly, TRPA is prohibited from paying the travel expenses of its officers who are also state officials.

B. PURCHASING LUNCH OR REFRESHMENTS FOR EXECUTIVE COMMITTEE MEMBERS, WHICH MAY INCLUDE STATE OFFICIALS

T.C.A. § 3-6-305(b) contains an exception to the gift ban for meals associated with an in-state event, as follows:

(10)(A) Food, refreshments, meals, or beverages that are provided by an employer of a lobbyist in connection with an in-state event to which invitations are extended to an official or officials in the legislative branch or official or officials in the executive branch; provided, that:

(i) No employer of a lobbyist may provide food, refreshments, meals, or beverages, the value of which to the official exceeds fifty dollars (\$50.00) per event per day, excluding sales tax and gratuity; nor may such employer of a lobbyist provide any such items to any official pursuant to this subdivision (b)(10)(A)(i) that have a cumulative value of more than one hundred dollars (\$100) to the official during a calendar year;

(ii) The value of any such gift may not be reduced below such monetary limitations by dividing the cost of the gift among two (2) or more employers of lobbyists;

(iii) This exception to the prohibition in subsection (a) only applies to a member or members of the general assembly, if the member or members do not receive a per diem allowance pursuant to § 3-1-106, for the day on which the event is held and the member or members do not receive any food, refreshments, meals or beverages that are provided in connection with the in-state event that are not offered or provided to other nonmembers in attendance at the event; and

(iv) An officer or management-level employee of each employer of a lobbyist paying for the event shall attend the event; however, a lobbyist shall not be considered to be an officer or management-level employee of an employer of the lobbyist paying for the event for purposes of this subdivision (b)(10)(A)(iv).

Accordingly, under T.C.A. § 3-6-305(b)(10)(A), those members of TRPA's Executive Committee who are state employees may participate in the working lunch as long as the value of any food, refreshments, or beverages that are provided by TRPA does not exceed \$50.00 per person, per day, and the other statutory requirements listed above are followed.

C. MEAL TICKETS AND REGISTRATION FEES FOR STATE OFFICIALS WHO VOLUNTEER AT EVENTS

T.C.A. § 3-6-301(11) specifically excludes from the definition of "gift" the waiver of a registration fee to a conference or educational seminar. Accordingly, TRPA may waive the registration fee for volunteers who are state officials.

State officials may accept a meal ticket or meal as long as it complies with the “in-state event” exception contained in T.C.A. § 3-6-305(b)(10), as discussed in Section B, above.

D. MEMBERSHIP PACKAGES AND DISCOUNTS FOR STATE AGENCIES

From the information provided to the Commission, a membership package provides opportunities and benefits for the state employees working in the agency, such as monthly magazines, access to employment vacancies, notice of educational workshops and access to a membership listserv. Additionally, there are no restrictions on agency membership. Anyone who has an interest in parks and recreation can become a member.

T.C.A. § 3-6-305(b)(6) provides an exception to the gift ban:

Opportunities and benefits made available to all members of an appropriate class of the general public, including but not limited to:

(A) Discounts afforded to the general public or specified groups or occupations under normal business conditions, except that such discounts may not be based upon on the status of the candidate or official;

The exception contained in this statutory section permits the TRPA to provide membership packages and discounts to state agencies as long as the benefits of such packages are not enhanced due to the status of the employees as state officials.

E. CO-SPONSORING TRAINING EVENTS WITH STATE AGENCIES

TRPA states that it pays \$500.00 for a sponsorship. This amount is not set by the co-sponsoring state agency, but by what the TRPA can afford. Moreover, the TRPA has no control over how the monies are used by the other agency. In fact, any portion of the \$500.00 sponsorship may be used to provide a tabletop display, used to defray the costs of food, materials, equipment, or reduce attendance fees. The event attendees are typically private citizens, government employees, and members of the TRPA’s advisory board.

Through sponsorship of such events, TRPA is purchasing the right for certain of its members to attend the event, and additionally purchasing the right to advertise the TRPA to attendees. Under T.C.A. § 3-6-301(11), as long as the TRPA purchases goods or services from a state agency for fair market value, TRPA is not providing a “gift” and the gift restrictions of T.C.A. § 3-6-305 do not apply.

F. PROVIDING FOOD AND REFRESHMENTS TO STATE OFFICIAL MEMBERS AT EVENTS SPONSORED BY AN EMPLOYER OF A LOBBYIST OTHER THAN TRPA

On occasion, the TRPA will host a training event. An employer of a lobbyist, other than TRPA, may pay for food, beverages and refreshments that are provided to state employees who are attendees and volunteers at an event hosted by the TRPA, if the employer of a lobbyist

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complies with the “in-state event” exception contained in T.C.A. § 3-6-305(b)(10)(A)(i), as discussed in Section B, above.

G. RENTING MEETING SPACE FROM A STATE OR LOCAL GOVERNMENT ENTITY

Is TRPA permitted to rent meeting space from state or local agencies? Will the answer remain the same if TRPA leases space in state parks while lobbying the state on issues relating to parks, recreation, and the environment? Will the answer remain the same if the city of Memphis moves to adopt the state ethics law?¹

T.C.A. § 3-6-301(11) exempts from the definition of “gift” items or services for which consideration of equal or greater value is received. Accordingly, TRPA may rent meeting space, a/v equipment, etc. from the state, including those state agencies that TRPA directly lobbies, as long as TRPA pays fair market value for the items and services.

The Commission does not have jurisdiction over TRPA’s activities as they relate to local government officials. However, it is not certain that the TRPA’s contract with the Memphis Convention Center is with an entity that is allowed by law to place itself under the jurisdiction of the Commission. Assuming arguendo that such entity is allowed to do so and in fact does so, the TRPA is not prohibited from entering into a contract under which it pays fair market value for the accommodations, goods and services that it receives.

Thomas J. Garland,
Chair
R. Larry Brown
Donald J. Hall
Linda Whitlow Knight, Esq.
Dianne Ferrell Neal
Benjamin S. Purser, Jr.,
Commissioners

Date: September 27, 2007

¹ The Commission notes that, in accordance with Public Chapter 161, codified, in relevant part, in T.C.A. § 8-17-103(b), Shelby county may vote to adopt the state ethics law. No provision currently exists which would allow Memphis city government to adopt the state ethics law.